

NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court invites interested persons to comment on proposed amendments to Neb. Ct. R. of Pldg. in Civ. Actions 5(b), 6(e), and 11(a). These amendments are required by the legislative amendment to Neb. Rev. Stat. § 25-534 by L.B. 1014, § 8, and were drafted for the Supreme Court, at its request, by the Supreme Court Committee on Practice and Procedure.

Anyone desiring to comment on these proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to iasmussen@nsc.state.ne.us, no later than May 30, 2008. The proposed amendments may be reviewed in hard copy in the Office of the Clerk of the Supreme Court and Court of Appeals upon request.

(Proposed amendments can be found on the following 2 pages.)

Proposed Amendments to Nebraska Rules of Pleading in Civil Cases to Follow Amendment of § 25-534

Rule 5. Serving and Filing Pleadings and Other Papers

(a) {no change in current text}

(b) Same: How made. ~~{Reserved}~~

Comment. The method of service of papers after the complaint and summons is governed by § 25-534.

(1) Whenever in any action or proceeding, any order, motion, notice, or other document, except a summons, is required by statute or rule of the Supreme Court to be served upon or given to any party represented by an attorney whose appearance has been noted on the record, such service or notice shall be made upon or given to such attorney, unless service upon the party or some other person is ordered by the court.

(2) Service upon an attorney or upon a party not represented by an attorney shall be made by:

(A) delivering the paper to the person to be served;

(B) mailing it to the person to be served by first-class mail at the address designated pursuant to Rule 11(a)(1), or if none is so designated, to the last-known address of the person;

(C) leaving it at the person's office with the person's clerk or other person in charge thereof; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(D) transmitting it by facsimile to the person, if the person has designated a fax number pursuant to Rule 11(a)(2);

(E) sending it to the person by electronic means if the person being served has designated an email address pursuant to Rule 11(a)(2);

(F) delivering it by electronic or other means consented to in writing by the party being served.

(3) Proof of service may be made by certificate of the attorney causing the service to be made or by certificate of the party not represented by an attorney. A certificate of service shall state the manner in which service was made on each person served.

(4) Service by mail is complete upon mailing. Service by facsimile or electronic means is complete upon transmission, but it is not effective if the person attempting to make service learns that the attempted service did not reach the person to be served.

(5) Any requirement that a document or notice in a civil action be written or in writing is satisfied if the document or notice is served by electronic means pursuant to subsection (2) of this Rule.

(c), (d) and (e) {no change in current text}

RULE 6. Time

(a) - (d) {no change in current text}

(e) Additional Time After Service by Mail, Electronic or Certain Other Methods.

~~[Reserved]~~ Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served under Rule 5(b)(2)(B), (D), (E), or (F), three days shall be added to the prescribed period.

~~Comment. Additional time after service by mail is governed by the last paragraph of § 25-534.~~

Rule 11. Signing of Pleadings, Motions, and Other Papers

(a) (1) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Each paper signed by an attorney shall state the attorney's bar identification number. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by an affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(2) The signature block on any paper may designate a fax number to which papers addressed to the signer may be sent by facsimile. The signature block on any paper may designate an email address to which papers addressed to the signer may be sent electronically.

(3) An electronically filed document which requires an attorney's signature shall be signed in the following manner: "s/(attorney name)."

(b) - (d) {no change in current text}